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In re Application of .	:	DECISION ON
Colin Roy Tarry	:	
Application No.: 10/552,221	:	
PCT No.: PCT/GB2004/002957	:	PETITION UNDER
Int. Filing Date: 08 July 2004	:	
Priority Date: 12 July 2003	:	37 CFR 1.10 (e)
Attorney's Docket No.: 198/43889/Case 522- PCT-US	:	
For: CONDUCTIVE MATERIALS	:	

This is in response to applicant's "PETITION TO REVIVE" filed 29 January 2008, which is being treated as a petition under 37 CFR 1.10(e) requesting that the "RESPONSE TO NOTIFICATION ... DESIGNATED/ELECTED OFFICE (DO/EO/US)" be considered as received in the United States Patent and Trademark Office (USPTO) timely. No petition fee is required.

BACKGROUND

On 06 October 2005, petitioner filed in the United States Patent & Trademark Office a transmittal letter for entry into the national stage in the U.S. under 35 U.S.C. 371, which was accompanied by, inter alia, the U.S. basic national fee. No executed declaration or oath was submitted at such time.

On 21 August 2006, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a), and (b), identifying the application by the International application number and international filing date. The current oath or declaration does not comply with 37 CFR 1.497(a) and (b) in that it: is not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68." The notice indicated that the items must be submitted within two months from date of mailing or by 32 months from the priority date of the application, in order to avoid abandonment of the national stage application.

On 22 January 2008, the United States Patent and Trademark Office mailed the Notification of Abandonment (PCT/DO/EO/909) since applicant failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905), mailed 08/21/2006 within the time period set therein.

On 29 January 2008, applicant filed the present petition. The petition states that on August 25, 2006, applicant submitted a Response to the Notification of Missing Requirement, which was timely. The petition includes, *inter alia*, a copy of "Express Mail" Label No. EV389414962US, however it is blank with respect to the "date-in" box and there is no date stamped by the USPS.

DISCUSSION

37 CFR 1.10(e) states:

(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS, but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
- (4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence, and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence original Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

Applicants has satisfied item (1), but not items (2) - (4) of 37 CFR 1.10(e).

With regard to item (1), the present petition was promptly filed.

With regard to item (2), a review of the application file indicates that the number of the Express Mail mailing label "EV389414962US" was not placed on the correspondence, i.e., it does not appear to be placed any of pages of the correspondence received.

With regard to item (3), applicant not has provided a copy of the originally purported a copy of the Express Mail label "EV389414962US" showing the "date-in" as 25 August 2008. The statement provided by Amy Lazzari is not a substitute for the requirement of the "Date-in" date on the "Express Mail" label showing the date the papers were filed at the USPS.

With regard to item (4), applicant has not provided the requisite statement that applicant submits true copies of the documents submitted on 25 August 2008.

For the above reasons, it would not be appropriate to grant the petition under 37 CFR 1.10(e) at this time.

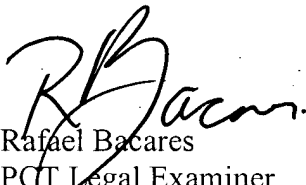
Accordingly, the application remains abandoned.

CONCLUSION

For reasons above, the petition under 37 CFR 1.10(e) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(e)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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